

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

**STATE OF KANSAS, STATE OF NORTH
DAKOTA, *et al.*,**

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 1:24-cv-00150-DMT-CRH

RESPONSE TO ORDER FOR SUPPLEMENTAL INFORMATION

Pursuant to the Court's Order for Supplemental Information, ECF No. 87, the State of North Dakota respectfully submits the following partial response.

1. On October 15, 2024, the Court held oral argument on Plaintiffs' Motion for a Stay of the Final Rule and Preliminary Injunction. *See* ECF No. 84. In response to arguments made during the hearing, the Court ordered Defendants to identify for North Dakota, under seal, the 130 DACA recipients in North Dakota, for the purpose of assessing North Dakota's standing in this litigation and the appropriateness of venue. *See* ECF No. 87. The Court ordered Defendants to provide the names and addresses of known DACA recipients in North Dakota by October 29, 2024, and directed North Dakota to provide a response identifying its direct and indirect costs attributable to those DACA recipients by November 12, 2024. *See* ECF No. 87.

2. Defendants filed a motion for reconsideration of that order. *See* ECF No. 90; *see also* ECF Nos. 93, 96. This Court denied that motion, but amended its prior order to: (a) exclude from disclosure information pertaining to two individuals in North Dakota whose information is

also subject to disclosure limitations under 8 U.S.C. § 1367(a)(2);¹ and (b) direct the parties to work together on a protective order. *See* ECF No. 98.

3. The parties then jointly submitted a proposed protective order, which was entered by the Court on October 29, 2024. *See* ECF No. 100.

4. On October 29, 2024, Defendants provided the names and addresses of 126 DACA recipients in North Dakota under seal.² The parties then submitted a proposed amendment to the protective order on October 31, which is currently pending before the Court. *See* ECF No. 102.

5. In accordance with the Court's order, North Dakota has assessed certain direct and indirect public costs that are attributable to the identified 126 persons, and now files this partial response to the Court's order for supplemental information. The State is still conducting an assessment of whether its records indicate any of the 126 identified DACA recipients are enrolled in the State's public education system or have dependents enrolled in the State's public education system, and intends to provide a supplemental response on that point as soon as able, and no later than the deadline of Nov. 12, 2024 at 5:00 pm CT set by the Court in ECF No. 87.

I. State Expenses Attributable to Driver Licenses and Identification Cards.

6. The N.D. Department of Transportation issues two primary types of credentials—Driver Licenses and Identification Cards—with both types of credentials being produced at a net financial loss for the State of North Dakota. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶¶ 6, 12, 14.

7. The N.D. Department of Transportation is only capable of reporting per-applicant costs for Driver Licenses and Identification Cards on an average and aggregated basis, and is unable to quantify the difference in average costs associated with issuing citizen and non-citizen credentials. However, to the extent there is a difference in cost-per-applicant, the N.D. Department of Transportation anticipates that the average cost for non-citizen applicants (including DACA

¹ After the Court's order but before disclosing the directed information, counsel for the Defendants informed counsel for North Dakota that a third individual in the data set was also subject to disclosure limitations under 8 U.S.C. § 1367(a)(2); the parties agreed that the Defendants would withhold that third individual's name and address as well.

² The data sent by Defendants includes only 126 names and addresses.

recipients) would be higher than the overall average due to additional staff time required for confirming eligibility. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 18.

8. In providing the calculations and estimates summarized below, the N.D. Department of Transportation used data from the 2021-23 biennium, but it does not have any reason to believe that the average net costs for the current biennium would be fundamentally different. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 3.

A. Driver Licenses.

9. The average cost-per-applicant for a Driver License is different based upon whether the applicant is seeking an initial license or a new license after their prior license has lapsed (both of which require testing), or whether the applicant is seeking a timely renewal of an already-issued license (which typically does not require testing).

i. Average Driver License Net Costs (Without Testing).

10. When a non-commercial Driver License is issued without testing (primarily for applicants seeking a timely renewal of a previously issued Driver License), the State of North Dakota incurs approximate average net costs of \$3.97 for each Driver License that is issued. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 6.

11. That average net cost per Driver License issued (without testing) includes the average staff time and material expenses for processing each application, updating required databases, and creating and distributing each physical card (\$18.97), and it accounts for being offset by the applicant fee that is charged for each card (\$15.00). *Id.*

ii. Average Driver License Net Costs (With Testing).

12. When a non-commercial Driver License is issued after testing (generally because the applicant is seeking an initial license), the State also incurs average additional net testing costs of at least another \$3.97 per Driver License issued. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶ 11.

13. That additional net testing cost includes the cost of staff time for administering and reviewing the road test portion of the testing (average costs to the State of \$12.47 per road test) as well as a flat fee incurred by the State every time a written test is taken in-person (\$1.50 per written

test taken in-person) and it accounts for being offset by the applicant fees that are charged to most applicants for testing (\$5.00 each for a road test and for an in-person written test, for a total of \$10 per average applicant). *Id.* at ¶¶ 8, 9, 11.

14. Most of the costs incurred by the State for Driver License testing come from the road test portion of the testing, and for purposes of this declaration the N.D. Department of Transportation treated the staff time cost for administering and reviewing the written portion of the testing as \$0.00. *Id.* at ¶ 8. While some Driver License applicants require multiple tests before receiving a license, most applicants who receive a license require only one written test and one road test. *Id.* at ¶ 10. For purposes of this declaration, the N.D. Department of Transportation calculated an average net cost per applicant who received a Driver License after requiring testing by assuming that each applicant required one road test and one in-person written test. *Id.* at ¶ 10.

15. Using those assumptions for the average testing applicant, NDDOT calculates that the average net cost of testing per Driver License that was issued with testing is \$3.97. That value is in addition to the average approximate cost for processing and creating each card described above (\$3.97), yielding an average net cost of \$7.94 for each non-commercial Driver License that was issued after requiring testing. *Id.* at ¶ 12.

B. Identification Card Net Costs.

16. The State of North Dakota incurs average approximate net costs of \$10.97 per Identification Card issued. *See* Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶¶ 13-14. Like with Driver Licenses that are issued without testing, that average net cost per credential includes staff time and material expenses for processing each application, updating required databases, and creating and distributing each physical card (\$18.97), and the net cost accounts for being offset by the application fee that is charged for each Identification Card (\$8.00). *Id.*

C. Estimate of Net Costs for the Currently Active Driver Licenses and Identification Cards Issued to Identified DACA Recipients in North Dakota.

17. From among the 126 DACA recipients identified by Defendants, the N.D. Department of Transportation's records indicate the following number of currently active non-commercial Driver Licenses and Identification Cards, at the following average net costs:

a. Non-Commercial Driver Licenses (Without Testing):

- 67 at \$3.97 each = \$265.99

b. Non-Commercial Driver Licenses (With Testing):

- 36 at \$7.94 each = \$285.84

c. Identification Cards:

- 3 at \$10.97 each = \$32.91

See Exhibit 1 (Oct. 31 Rehborg Decl.) at ¶¶ 6, 12, 14, 17.

18. Based upon the above, North Dakota submits that the currently active non-commercial Driver Licenses and Identification Cards issued to the 126 identified DACA recipients in the State were produced at a total net cost to the State of approximately \$584.74.

II. State Expenses Attributable to Public Education.

A. Average Costs Incurred by the State Per Student.

19. As stated in a declaration provided by the N.D. Department of Public Instruction, the State of North Dakota incurred average educational costs of \$14,345.87 for each student in the public education system during the 2022-23 school year. *See* Exhibit 2 (Tescher Decl.) at ¶ 4. That number reflects teacher salaries and various classroom-related expenses, but it does not include extracurricular-related expenses, capital outlay, school lunch programs, or transportation expenses that are incurred by the State. *Id.* The State does not have calculations of cost per student for the current school year, but reasonably anticipates the cost per student will not be lower than it was in 2022-23, as the cost per student has increased for the last decade and the Department of Public Instruction does not have any basis to anticipate that trend will stop this year. *Id.* at ¶ 5.

20. During the 2022-23 school year, the State of North Dakota also incurred average transportation costs per student of \$2,041.23 for each student in the public education system who received publicly funded transportation. *See* Exhibit 2 (Teschler Decl.) at ¶ 6. The State does not have calculations of average transportation costs per student for the current school year, but reasonably anticipates the cost per transported student will not be lower this year, as the transportation cost per student has increased for the last decade and the Department of Public Instruction does not have any basis to anticipate that trend will stop this year. *Id.* at ¶ 7.

21. During the 2022-23 school year, the State of North Dakota also incurred average costs per student of \$177 for each student in the public education system who subsidized or free school lunches. *See* Exhibit 2 (Teschler Decl.) at ¶ 8. That average cost reflects only the State portion of the average cost, and does not include average costs paid for by the federal government. *Id.* The State does not have calculations of average costs per student who received subsidized or free school lunches for the current school year, but reasonably anticipates the cost per student will be higher this year, as the State legislature has increased State funding for subsidized and free lunch programs since the 2022-23 school year. *Id.* at ¶ 9.

B. Estimate of State Costs for Public Education Related to Identified DACA Recipients in North Dakota.

22. As of the date of this filing, State agencies are still assessing whether State records indicate that any of the 126 identified DACA recipients in the State are enrolled in the State's public education system or have dependents enrolled in the State's public education system. Addressing that question has required resolving several issues related to data ownership and access, and it has required the parties to seek an amended protective order from the Court, which is still pending approval.

23. The State intends to file a supplemental response providing that information in aggregate form as soon as it is able, and in any event before the deadline of Nov. 12, 2024 at 5:00 pm CT set by the Court in ECF No. 87.

Dated: October 31, 2024

Respectfully submitted,

DREW H. WRIGLEY
North Dakota Attorney General

/s/ Philip Axt
PHILIP AXT
Solicitor General
Office of Attorney General
600 E. Boulevard Ave Dept. 125
Bismarck, North Dakota 58505
Phone: (701) 328-2210
Email: pjaxt@nd.gov

Counsel for the State of North Dakota